



February 10, 2012

Via Email TOUTestimony@capitol.hawaii.gov
Committee on Tourism
Representative Tom Brower, Chair
Representative James Kunane Tokioka, Vice Chair
415 South Beretania Street, Room 615
Honolulu, Hawaii 96813

RE: H.B. No. 2069, HD1 Relating to Housing

Dear Representative Brower and Representative Tokioka:

My name is Kelvin Bloom. I am the Manager and President of Aston Hotels & Resorts, LLC, which operates resort rental programs in 18 condominium projects in the State of Hawaii. I also serve on several boards of associations of apartment owners, and am currently the President of one association. I am writing regarding H.B. No. 2069, HD1 which seeks to prohibit a condominium board of directors from setting the rent for a common element at an amount below fair market rent value to individuals or entities who are not apartment owners, and to require all direct costs attributable to condominium hotel operations to be charged only to unit owners whose units are included in condominium hotel operations. I oppose H.B. No. 2069, HD1 Relating to Housing.

Associations of apartment owners frequently rent common elements to any number of lessees including restaurants, convenience store operators, travel agents, real estate brokerages, health facilities, beauty parlors, and condominium hotel operators. The desirability of one condominium project over another to a lessee is influenced by a variety of factors including the location of the project, the quality of the project, the size of the project, the amount transient occupancy versus resident occupancy, the current competition and market, etc. The value of various lessees occupying the common element space to an association of apartment owners will also vary from one condominium project to another depending on the particular circumstances facing the association of apartment owners at the time. Often, the board of directors of an association of apartment owners will have to provide significant incentives to lessees including below market rent to attract an appropriate tenant (much less any tenant) who will provide the services desired by the association of apartment owners to owners and guests. Moreover, the value of a tenancy is measured in many ways including improving

the desirability of the project for owners and guests and improving the market value of the units for owners. It would be very difficult for an association of apartment owners to determine a fair market rental value for any common element space without incurring a significant valuation cost to the association, and ultimately, the unit owners.

Further, the recent amendment which applies the prohibition only to leases with individuals or entities who are not apartment owners does not stand to reason. Any lessee of a common element, regardless of whether he, she or it is an apartment owner or not, will benefit from the lease in the same manner as any other lessee, and will offer benefits both to the apartment owners of the condominium project and the guests of the condominium project.

With respect to allocating all direct costs attributable to the condominium hotel operations to only the unit owners with units included in the condominium hotel operation, please note that condominium property regimes do not currently distinguish between residential units and condominium hotel units. If a unit is permitted to be used for residency or transient occupancy, it is the unit owner who determines how the unit will be used at any given time. Further, should a unit owner decide to use his or her unit for transient occupancy, the unit owner may rent the unit directly or via any number of on-site and off-site condominium hotel operators who may offer transient rentals in the condominium project. How will the costs be allocated amongst the various condominium hotel operators offering transient rentals in a condominium project? How will the costs be assessed and collected? What if a unit owner chooses to use his unit for residency in some months and transient occupancy in other months? Will owners who do not use their units for transient occupancy, but still take advantage of the services offered by a condominium hotel operator also be assessed? How will the direct costs attributable to condominium hotel operations be determined? The proposed statutory amendment raises a number of questions which need to be addressed.

I believe it would be more appropriate for the board of directors of any association of apartment owners to exercise their business judgment with respect to these issues on a case-by case basis taking into consideration the interest of all unit owners who they represent, or to amend their governing documents as deemed appropriate, rather than amend the statutory language pertaining to condominiums as a whole.

We urge you to hold this measure.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kelvin Bloom", with a stylized, flowing script.

for Kelvin Bloom

Testimony for TOU 2/13/2012 9:15:00 AM HB2069

Conference room: 312

Testifier position: Oppose

Testifier will be present: No

Submitted by: Jeff Halpin

Organization: Classic Resorts Limited

E-mail: jhalpin@classicresorts.com

Submitted on: 2/10/2012

Comments:

I am writing in strong opposition to this bill. My company manages condominium hotel properties and leases certain common areas. Often, in lieu of cash rent, we provide services and personnel to the condominium association to save them money. Owners not in the rental program often benefit and utilize these services. Each condominium has its own needs and should be able to make a self determination as to how to manage its own common areas. With regards to direct costs, we also provide services like housekeeping and maintenance to those units that are not full time in rental programs. They don't contribute to the direct cost structure. Are we now to deny them services? This bill is another classic example of governmental overreach. Let the condominium boards make their own decisions as to how to manage their properties. Each condominium has a process for removal of directors as well as mediation if homeowners do not like Board decisions.

Jeff Halpin



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COMMUNITY ASSOCIATION MANAGEMENT

Queen's Court « 800 Bethel Street, Suite 501 « Honolulu, Hawaii 96813

February 10, 2012

**Testimony HB2069
Support with Amendments**

Hawaii First, Inc. is the thirds largest association management company in Hawaii and is familiar with the issues related to HB2069.

I SUPPORT the intent of HB 2069 but suggest certain amended language. Many of Hawaii's resort condominiums provide areas that may be leased by the condominium association. In some cases, the projects documents or the number of units in a condo hotel class ended up skewing a Board's voting power to a majority and possibly at the determine of other owners who may not want to participate in the condo hotel pool. Although there is a rationale basis to support the will of the majority owners and the basic premises the project was developed for, the leasing of space might be used unfairly to the advantage of others to the disadvantage of the association. Under the current law there is no means to address concerns or protect the interest of the consumer. On the other hand, a Lessee may make a sizable investment in the leased space and needs an opportunity to recover his investment. I suggest the following amended language in ***bold italics*** for your consideration:

- (A) Shall not set rent at an amount below fair market rent
value to individuals or entities who are not
apartment owners;
- (B) Shall not have a term exceeding five years
[and shall contain] ***without the approval of***
75% of the association's unit owners; and
- (C) Shall contain a provision that the lease or
agreement for use may be terminated ***upon the***
end of its initial term by either party
thereto on not more than sixty days written
notice ;





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COMMENT: There are situations where substantial capital investment is required by a Lessee. By allowing a longer lease subject to 75% of the unit owners allows a super majority of an association to make an informed decision on the proposed lease. If a lease could be cancelled on a simple 60-days notice, many Lessees would decline the lease opportunity which in effect would reduce the fair market price of the rent. Similar language should be amended in both HRS 514A and HRS 514B.

The Bill further addressed the requirement to assess condo hotel unit owners for their share of the condo hotel costs are only paid by the condo hotel unit owners who participate in the condo hotel programs. This proposal makes perfect sense as there are situations where the condo hotel unit owners represent a majority but their view of the amenities and services serve the condo hotel but not the other unit owners. In those cases, only the condo hotel unit owners should bare the cost of the expenses that benefit a few. In today's technology it is not difficult to capture and allocate the costs.

(c) In a condominium project that includes residential units and condominium hotel units, all direct costs attributable to the condominium hotel operations shall be charged only to the unit owners with units included in the condominium hotel operations **unless 75% on the association's unit owner has approved the direct cost as an association common expense.**

COMMENT: There will be circumstances where direct costs may be wanted by the super majority and such flexibility should be allowed. This amended provision eliminates a single unit owner from objecting to the preferences of the super majority. Every project has its own character and purpose and such amendment creates a balanced means to address direct costs.

I support HB 2069 with amendments. As the Bill addresses both HRS 514A and 514B, appropriate language as identified above should be included in both laws.

Warmest aloha,

President





HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON TOURISM
Representative Tom Brower, Chair

2/13/12
Rm. 312, 9:15 AM

HB 2069, HD 1
Relating to Housing

Chair Brower and Members of this Committee,

My name is Max Sword, here on behalf of Outrigger Hotels Hawaii, in opposition to this bill.

Let me address the section in this bill that requires the dividing of costs between those in the rental program and those who are not in the rental program of a condominium hotel (“condo hotel”) property.

While the basic concept of having the units in a condo hotel rental program pay for its own operational costs is admirable, it is not realistic to draw a bright line between the two.

First, the costs are shared between both parties because they are both members of the Association of Apartment Owners (AOAO) and, as such, they both use or benefit from common assets such as the pool, hallways, and even landscaping. While it might be possible to separate these kinds of costs, it is more cost efficient overall for the apartment owners to share the costs of operation and maintenance between the AOAO, on the one hand, and the units in the rental program, on the other.

The cost of operating the property is usually based on a mutually agreed-upon formula between the AOAO and the condo hotel operator, and this has worked well.

Also, in a condo hotel property, some unit owners typically take their unit in and out of the rental program - most of the time on a monthly basis, other times weekly, and even occasionally on a daily basis, based on their personal use. Needless to say, handling the allocation of the cost of usage in these situations would be problematic.

The bottom line is that it will cost all members of the AOAO a lot more money to operate under what is proposed in HB 2069, if it is passed.

We urge the tabling of this measure and mahalo for allowing me to testify.